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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,211	02/13/2002	Jay K. Sheerer	10-1374	6248
7590 11/10/2003 NIXON & VANDERHYE P.C. 8th Floor 1100 North Glebe Road Arlington, VA 22201-4714			EXAMINER ALVO, MARC S	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/073,211

Applicant(s)

SHEERER

Examiner

Steve Alvo

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18, 19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

Application/Control Number:  
10/073,211  
Art Unit: 1731

Page 2

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e))

Claims 18, 19 and 21 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MARCOCCIA (5,985,096).

See MARCOCCIA et al, claims 1,

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over MARCOCCIA et al or JOHANSON or PROUGH with or without RICH.

MARCOCCIA et al (Figures 3, 16A and 16B) or JOHANSON or PROUGH teaches continuous annular protrusions connected to an internal section of a vessel each protrusion having a triangular cross section. MARCOCCIA et al teaches using impervious protrusions 53, 122, 40 (Figure 3) and 84, Figures 16A and 16B, which extend into the vessel at locations offset from the screens in portions of the vessel that are hollow. MARCOCCIA et al also teaches that these protrusions extend 12 inches into the vessel, see Figure 20. MARCOCCIA (Figures 3, 16A and 16B) teaches continuous annular protrusions connected to an internal section of a vessel each protrusion having a triangular cross section. The MARCOCCIA et al teaches using impervious protrusions 53, 122, 40 (Figure 3) and 84, Figures 16A and 16B, which extend into the vessel at locations offset from the screens in portions of the vessel that are hollow. MARCOCCIA et al also teaches that these protrusions typically extend 6 inches into the vessel (column 1, line 58) or Figure 20 shows the protrusions to extend 12 inches into the vessel. If necessary, it would have been obvious to the artisan that the step-out protrusions of MARCOCCIA et al would be 6 inches as such is typical in the art. MARCOCCIA et al teaches such a design allows for "column relief", page 7, lines 18-23. If necessary, RICH teaches using a screening surface having a space from the vessel surface of 3/4 to 2 inches (column 3, lines 54-57). It would have been obvious to structure the protrusions of the MARCOCCIA et al (Figures 3 and 16 A and B) or JOHANSON or PROUGH to the depth taught by RICH so they correspond to the depth of the screens (43) in MARCOCCIA et al or PROUGH or JOHANSON. See MARCOCCIA et al, Figure 19 for triangular shaped protrusions. See Figures 12 and 13 for a perimeter defined by the protrusions of a hollow region. See Figure 13 for the screen assembly

Application/Control Number:  
10/073,211  
Art Unit: 1731

Page 4

vertically offset from protrusion 82. The drawings show 53, 122, 40 (Fig. 3) and 84, Figures 16A, 16B, Figure 13 as solid lines, which would indicate that the protrusions are solid.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 18, 19 and 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,280,569. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims only differ in scope with those of the Patent and would have been obvious over the claims of the Patent.

Application/Control Number:  
10/073,211  
Art Unit: 1731

Page 5

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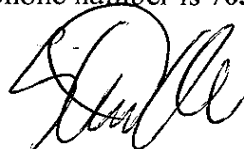
**Non-Final Fax: (703) 872-9310      After-Final FAX: (703) 872-9311.**

When filing an **"Unofficial"** FAX in Group 1730, please indicate in the Header (upper right) **"Unofficial"** for Draft Documents and other Communications with the PTO that are not for entry into the file of the application. This will expedite processing of your papers. The **"Unofficial"** FAX phone number for this Art Unit (1731) is **(703) 305-7115**.

Any inquiry concerning this communication or earlier communications from the **primary examiner** should be directed to **Steve Alvo** whose telephone number is **(703) 308-2048**. The Examiner can normally be reached on Monday - Friday from **6:00 AM - 2:30 PM (EST)**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Steve Griffin, can be reached on 703-308-1164.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Group receptionist** whose telephone number is **703-308-0661**.



**STEVE ALVO  
PRIMARY EXAMINER  
ART UNIT 1731**

MSA  
11/2/2003